



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 04942-99
3 December 1999

MSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Master Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552, where you requested removal of two fitness reports, for 4 to 28 June 1998 and 29 June to 18 September 1998.

It is noted that the Commandant of the Marine Corps (CMC) has removed the fitness report for 4 to 28 June 1998.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 3 August 1999, and a memorandum for the record dated 29 November 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that the contested report for 29 June to 18 September 1998 should stand.

The Board was unable to find the remaining contested report was factually inaccurate. They were likewise unable to find this report should have been "not observed," noting the reporting senior's observation need not be direct. They noted that paragraph 3005.2 of Marine Corps Order P1610.7D provides an exception to the general policy regarding a minimum observation period, when sufficient opportunity to observe existed, and the information provided is significant and fair to the Marine concerned. The Board was unable to find the

reporting senior had insufficient basis to render an observed report. They found the information provided, concerning your relief for cause, was significant; and they were unable to find it was unfair to you. They found paragraph 3006.2.a was inapplicable, as it relates to "CH" (change of reporting senior) or "TR" (transfer) fitness reports, while the report at issue is a "DC" (directed by the Commandant of the Marine Corps) report. The Board found no violation of paragraph 4006.6, prohibiting inclusion in a fitness report of information from an adverse report received from outside the command, unless it is "uncontroverted" or acknowledged as true by the Marine concerned. They concluded that the purely factual aspect of the unfavorable information in the remaining contested report is uncontroverted, but what you dispute is the reporting senior's opinion that your words reflected disparagement and discrediting of your band and its members, and the further opinion that you did not do enough to prevent the disturbance in a nightclub. They were unable to find that these opinions were unjustified.

In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4942-99

IN REPLY REFER TO:
1610
MMER/PERB
AUG 3 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MASTER SERGEANT [REDACTED] USMC

Ref: (a) MSgt. [REDACTED] DD Form 149 of 12 May 99
(b) MCO P1610.7D w/Ch 1-4
(c) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 July 1999 to consider Master Sergeant [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 980604 to 980628 (CH) -- Reference (b) applies - ~~REMOVED~~
- b. Report B - 980629 to 980918 (DC) -- Reference (c) applies

2. The petitioner contends that both reports contain administrative errors and are substantively inaccurate/unjust. Specifically, the petitioner believes that his exoneration by the Administrative Discharge Board is sufficient to form a basis for omitting any reference to the incidents that occurred outside the command. To support his appeal, the petitioner provides copies of the fitness reports at issue, a copy of the Administrative Discharge Board proceedings, and a copy of the findings/recommendations of the Administrative Discharge Board.

3. In its proceedings, the PERB concluded that:

- a. The removal of Report A is warranted and has been directed.
- b. Report B is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

(1) Although a late submission, the delay in transmitting the fitness report to this Headquarters does not invalidate the overall evaluation. In this regard, the Board observes that adverse reports are often delayed due to the referral/adjudication process.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
 ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
 MASTER SERGEANT [REDACTED] USMC

(2) The nature of Report B does not concern a single act or incident. Rather, it reflects the culmination of the Reporting Senior's loss of confidence in the petitioner as the MCLB Albany Band Leader and his subsequent relief for cause. The references to "events" occurring beyond the scope of this finite period are not offered to unduly penalize the petitioner, but are necessary to convey a pattern of questionable conduct and performance, known to the command, which called into question the petitioner's ability to perform independently and represent the Marine Corps in high visibility venues.

(3) Though there are some minor administrative concerns (such as timeliness), they are not of a magnitude that would invalidate the observation. All procedural requirements for referral, adjudication, and third sighting were accomplished. While not addressing each specification of the petitioner's rebuttal, the Reviewing Officer adjudicated the general text of the conflict between the petitioner and the Reporting Senior and adds credence to the accuracy of the Reporting Senior's observations.

(4) The Administrative Discharge Board is a separate matter, independent of the fitness report. While the Board may have agreed that the petitioner's actions were not so grievous that he should be separated from the Marine Corps, his actions certainly warranted comment in the fitness report. In fact, the documentation and statements included with reference (a) lend credence to these concerns.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report B should remain a part of Master Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
 Chairperson, Performance
 Evaluation Review Board
 Personnel Management Division
 Manpower and Reserve Affairs
 Department
 By direction of the Commandant
 of the Marine Corps

29 NOV 99

MEMORANDUM FOR THE RECORD

I SPOKE WITH [REDACTED] ON 29 NOV 99 REGARDING MSGT [REDACTED]
I ASKED FOR AN EXPLANATION AS TO WHY THE COMPLETELY NOT
OBSERVED ADVERSE FITNESS REPORT FOR 4 TO 28 JUN 98 WAS REMOVED BY
THE PERFORMANCE EVALUATION REVIEW BOARD.

SHE STATED THAT THE BOARD MEMBERS FELT THAT PETITIONER'S DEGREE
OF PERSONAL INVOLVEMENT IN THE SARATOGA SPRINGS ALCOHOL RELATED
INCIDENT WAS NOT EVIDENT.

[REDACTED] ON